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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

Implementation of Section 302 of  
the Telecommunications Act of 1996

Open Video Systems

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CS Docket No. 96-46

**REPLY COMMENTS OF CITY OF SANTA ANA**

The City of Santa Ana respectfully submits these reply comments to the Federal Communications Commission ("Commission" or "FCC" in the above captioned proceeding.

**1. INTRODUCTION**

On March 11, 1996, the Commission released a Notice of Proposed Rulemaking(FCC 96-99)("Notice"), requesting comment on how it should implement the regulatory framework for open video systems ("OVS"). In response, the National League of Cities, the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the U.S. Conference of Mayors, Montgomery County, and several cities (Hereinafter "NLC"), filed joint comments containing specific proposals for implementing that framework.

In their comments, NLC identified four key principles that must guide the Commission in formulating its rules. First, the Commission's rules regarding the PEG and other Title VI

Not a proposed rule  
Not a rule  
Not a rule

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requirements mandated by Congress for OVS must ensure that OVS operators will meet local community needs and interests. Second, the Commission must adopt nondiscrimination provisions that ensure that all programmers will have truly open and affordable access to OVS and that prevent an OVS from becoming a cable system in disguise. Third, the 1996 Telecommunications Act does not permit cable operators to become OVS operators. Fourth, the Commission's rules must acknowledge the property interests that local governments hold in the local public rights-of way.

The City of Santa Ana strongly supports NLC's comments and urges the Commission to follow these four principles in formulating OVS rules. The City of Santa Ana discusses below its experience in creating and implementing PEG obligations that meet critical local needs.

## II. DISCUSSION

The Commission's statutory mandate in adopting PEG requirements for OVS is clear. As NLC notes, the Telecommunications Act of 1996 requires the Commission to establish PEG obligations for OVS that are consistent with local needs and interests, and to impose on an OVS operator obligations equivalent to those obligations imposed on cable operators. To fulfill these mandates, the Commission should, as proposed by NLC, require OVS operators "to match or negotiate," that is, to match each incumbent cable operator's PEG obligations, or to negotiate agreements acceptable to the affected communities.

The record in this proceeding demonstrates that local governments as franchising authorities and PEG programmers play a

critical role in ensuring that local communications needs and interest are met.<sup>1</sup> Moreover, local governments, as the National Cable Television Association states, "are in the best position to deliver on the Act's intent to accomplish PEG access over open video systems."<sup>2</sup>

In the City of Santa Ana, the franchise required PEG channels include a city channel, a public access channel, a school district channel, and a college channel. The programming offered includes city council meetings, community oriented policing meetings, school board meetings, community events, school sports and much more. The electronic bulletin boards update the community on services, events, safety and community involvement. The City of Santa Ana depends on the video media to continually communicate information to the residents of Santa Ana.

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<sup>1</sup>See e.g., Comments on the Below-Named Political Subdivisions of the State of Minnesota at 7(franchising authorities have "considerable experience in successfully negotiating, creating and implementing ... PEG obligations"); Comments and Petition for Reconsideration of the National Cable Television Association, Inc. at 34 (" The local franchising authority is the governmental entity best positioned to appreciate community needs and most experienced in the implementation of PEG access rules"); and Joint Comments of Cablevision Systems Corporation and the California Cable Television Association at 21(:Congress certainly understood that PEG access requirements are now imposed by localities to meet critical localism goals").

<sup>2</sup>Comments and Petition for Reconsideration of the National Cable Television Association, Inc. at 33. See also, Comments of MFS Communications Company, Inc. at 27("The manner in which OVS operators and/or their customer programmers comply with the PEG obligations should generally be worked out between the programmer and the local government entity that oversees the implementation of these rules for cable operators").

By adopting NLC's proposal, the Commission will ensure that PEG access continues to serve local needs and interest in the City of Santa Ana, and will satisfy the Commission's statutory mandate to impose equivalent obligations on OVS and cable operators.

### III. CONCLUSION

The City of Santa Ana respectfully requests the Commission to adopt a framework for OVS consistent with the proposals and principles recommended by NLC et al. in their comments.

Professionally yours,

City of Santa Ana

By: Allen E. Doby  
Allen E. Doby  
Executive Director  
Recreation and Community Services Agency  
405 W. 5th Street  
P.O. Box 1988  
Santa Ana, CA 92702

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